

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Care Initiatives,
Petitioner-Appellant,

v.

Lyon County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-60-0074
Parcel No. 350000074700000

On June 25, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Care Initiatives, submitted evidence in support of its petition and was represented by attorney Deborah M. Tharnish of Davis Brown Law Firm of Des Moines. Lyon County Attorney Carl J. Petersen is counsel for the Board of Review and represented it by telephone at the hearing. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Care Initiatives appeals from the Lyon County Board of Review decision reassessing its property located at 1010 South Union Street, Rock Rapids, Iowa. According to the property record card (Exhibit A), the subject property consists of a 16,282 square-foot, one-story nursing home built in 1976. The property improvements also include an 1152 square-foot garage built in 2010. The site is 2.755 acres.

The real estate was classified as commercial for the assessment of January 1, 2011, and valued at \$620,450, representing \$69,750 in land value and \$550,700 in improvement value.

Care Initiatives protested to the Board of Review on the ground that the property is misclassified under Iowa Code section 441.37(1)(c). Care Initiatives requested the property classification be changed to residential. The Board of Review denied the petition.

Care Initiatives then appealed to this Board and reasserted its claim. It relies on Iowa Code section 441.21(11) and the holding in *The Evangelical Lutheran Good Samaritan Society v. Board of Review of the County of Montgomery*, 688 N.W.2d 482 (Iowa App. 2004), as the basis for its request for residential classification. It does not challenge the assessed value of the subject property.

Steve Marlow, Vice President and Chief Financial Officer for Care Initiatives, testified the organization owns forty-four skilled nursing homes in twenty-six, small Iowa communities, as well as assisted living facilities, and independent living facilities.

He testified Care Initiatives operates the subject property as a 501(c)(3) exempt organization. Care Initiatives submitted a letter from the Internal Revenue Service (IRS), dated July 18, 1996 (Exhibit 4). The letter determined Care Initiatives qualified as a section 501(c)(3) organization.¹ Marlow stated an audit conducted subsequently in 2005-2006 found no problems with Care Initiatives' continued non-profit status. He also noted Care Initiatives continues to qualify for 501(c)(3) status.

Additionally, Marlow explained that Care Initiatives filed IRS Form 990 – Return of Organization Exempt From Income Tax (Exhibit 3) for Care Initiatives, Inc. for calendar year 2009. He testified this return was the most recently filed return and was within the extension-filing period. The document indicates the organization owns and operates forty-five nursing homes, eight assisted

¹ To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Organizations described in section 501(c)(3) are commonly referred to as charitable organizations. Organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170. <http://irs.gov/charities/charitable/article/0,,id=96099,00.html> January 30, 2012.

living facilities, and four independent living facilities as charitable non-profits (Exhibit 3, p. 2). The return shows the corporation had no unrelated business taxable income from a Form 990-T (Exhibit 3, pp. 1 & 9).

Marlow testified Care Initiatives facilities provide services, including room and board, to 2685 elderly, infirm, and financially limited Iowa residents. The subject property, Lyon Manor, has forty-nine skilled nursing beds for Medicaid, Medicare, and private-pay residents. Residents live full-time at the facility. They are served three meals daily in the dining room. Twenty-four hour, nursing care is available and some residents receive periodic therapy. Staff provides social and recreational activities for the residents. Lyon Manor has a courtyard area for outside socialization and visiting family members.

Marlow also testified that Lyon Manor may provide some meals to the local Meals on Wheels program, the county jail, and to residents' family members, on occasion. He indicated his belief that these services were incidental to Lyon Manor's purpose. In Marlow's opinion, the facility is used primarily for human habitation. We agree. At most, these appear to be charitable or incidental meal service with little impact on the primary use of the facility.

Marlow reported Care filed assessment protests in thirty-six, Iowa counties to request a change in classification to residential. He indicated twenty-three boards of review granted the protests and changed the classification of the properties to residential.

Care Initiatives also provided a series of email communications and policy statements from the Iowa Department of Revenue (IDR) (Exhibits 5-7). These documents indicate IDR's position regarding the classification of property under the statute at issue. The emails occurred in approximately May 2011. Cary Halfpop, Chief Appraiser in the Property Tax Division at IDR, indicated in the letter that if nursing home properties and/or assisted living facilities are owned by a 501(c)(3) organization, are used primarily for human habitation, and if the rental income from the

property is not taxed as unrelated business income, they should be classified residential. In a follow-up email, Halfpop recommends seeing the 501(c)(3) documentation and reiterates the position that these properties should be classified residential. (Exhibit 7).

The crux of the Board of Review's position is that it believes the property is not used primarily for human habitation. For this reason, the Board of Review asserts, the property cannot be classified residential realty.

Assessor Fred Christians testified on behalf of the Board of Review. He testified that because Care Initiatives did not appear for the Board of Review hearing, the Board members were unclear about the day-to-day activities at Lyon Manor. He believed the Board of Review felt this property was not a typical residential property and instead fit within the commercial property classification.

In Christians' opinion, Lyon Manor provides goods and services, which places it in the commercial property classification. He compares Lyon Manor to a low-income apartment complex located at 1202 Third Avenue South in Rock Rapids known as Rosewood Heights. He believed the properties are similar and should be classified the same. Christians was familiar with both properties, but reported it had been a long time since he had been in either of them. Neither the assessor nor the Board of Review inspected Lyon Manor, or requested information from Care Initiatives to learn about the facility for the protest or appeal hearings, even though Care Initiatives gave them the opportunity in its appeal letter.

According to the Rosewood Heights' property record card (Exhibit B), the property is a 12,133 square-foot base, three-story, brick apartment building built in 1976. The property has fifty-five units and is classified as commercial real estate. Christians describes the property as an exempt organization serving handicapped, disabled, and elderly individuals. There is a notation in the exhibit

that the property is tax-exempt under Iowa Code section 427(21).² A list of rent and tenant information, which has handwritten notations, indicates twenty-five of the fifty-five units are vacant, six tenants are disabled, seventeen tenants are handicapped, and eight tenants are elderly.

Christians testified on cross-examination that Cary Halfpop with IDR is not his supervisor nor does he have supervisory authority over the Board of Review. When questioned further, he recognized, however, that the Director of IDR has that authority over both assessors and boards of review and may enforce those supervisory functions through IDR employees who are acting on behalf of and representing IDR.

The Board of Review also submitted a printout from Lyon Manor's website (Exhibit D). The exhibit describes the forty-nine bed facility, the staff, activities, and resident services, including nursing, therapy, assisted living, and dietary. The descriptions in the literature are consistent with those provided at hearing by Marlow.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

² This exemption applies to low-rent housing owned and operated or controlled by a nonprofit organization, as recognized by the internal revenue service, providing low-rent housing for the elderly and people with physical and mental disabilities. The exemption granted under the provisions of this subsection shall apply only until the final payment due date of the borrower's original low-rent housing development mortgage or until the borrower's original low-rent housing development mortgage is paid in full or expires, whichever is sooner.

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

Care Initiatives asserts its property is misclassified and its actual classification should be residential. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rule when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). There can be only one classification per property. *Id.* r. 701-71.1(1).

Iowa Code section 441.21(11) designates that properties meeting certain criteria to be classified as residential real estate. It states:

Beginning with valuations established on or after January 1, 1995, as used in this section, "residential property" includes . . . land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

Likewise, Iowa Administrative rule 701-71.1(4), related to the classification of residential real estate, states that properties owned and operated by section 501(c)(3) organizations are classified as residential real estate. It states:

Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, . . . [And] land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

Iowa Administrative Code rule 701-71.1(5), related to the classification of commercial real estate, includes the same language.

This issue has been addressed by the Iowa Supreme Court in *Evangelical Lutheran Good Samaritan Soc. v. Bd. of Review*, 688 N.W.2d 482, 491 (Iowa App. 2004). The Court held that an eighty-eight bed, non-profit, skilled-nursing facility in Red Oak, Iowa, met the statutory definition of residential property. It determined the property was “used primarily for human habitation, in contrast to ‘property primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale.’” *Id.* Further, it found the property was operated by a 501(c)(3) organization and income from the property was not taxed as unrelated business income. *Id.*

It is clear that Care Initiatives is a 501(c)(3) organization. Additionally, it is clear that its income from the property is not taxed as unrelated business income. Thus, all that is left for this Board to determine is whether the property is used primarily for human habitation, in contrast to “property primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail.” The record indicates the primary purpose of the facility is for human habitation. It provides housing for elderly and infirm individuals. In addition to being the “home” of these individuals, it also provides services to them that one would enjoy in their own home including meals and recreation. This determination complies with the holding in *Evangelical Lutheran*.

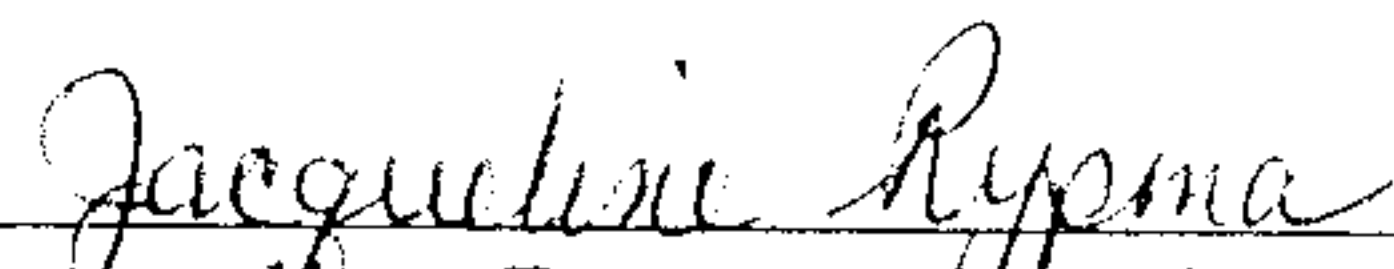
Although the Board of Review argues the law creates a “loop-hole” for properties generating income to be classified residential, we will not weigh in on this issue. It was within the legislature’s purview to permit these properties to qualify for residential classification.

Following Iowa law and administrative rules governing the classification of real estate, we find the Care Initiatives' property falls squarely within the residential classification. The preponderance of the evidence in the record demonstrates Care Initiatives' property is: (1) used primarily for human habitation; (2) its land and buildings are owned and operated by an organizations that has received tax-exempt status under section 501 (c)(3) of the Internal Revenue Code; and (3) its rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A, as of January 1, 2011. These factors confirm the claim that Lyon Manor is misclassified and should be classified residential.

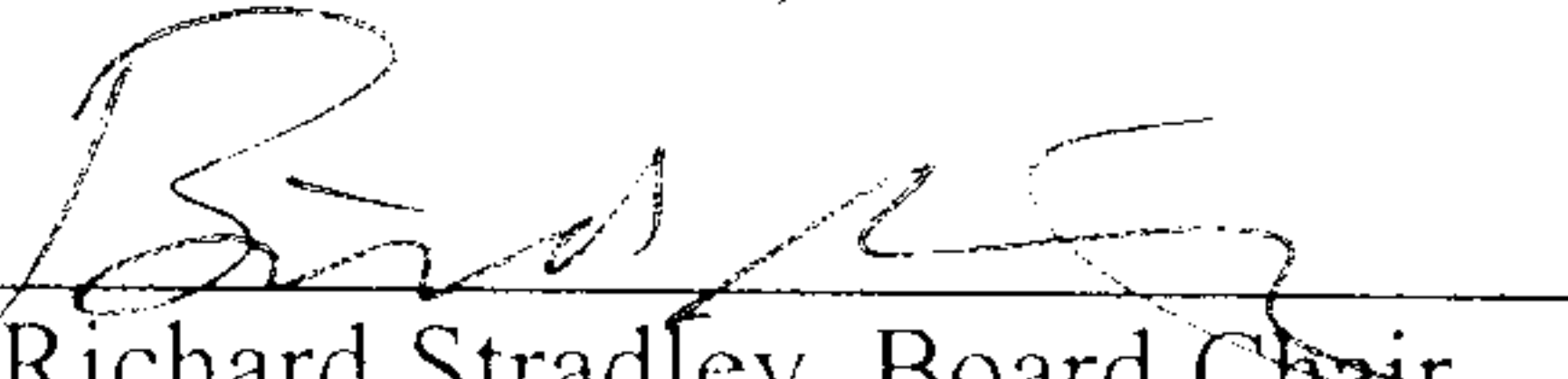
THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Care Initiatives' property located at 1010 Union Street, Rock Rapids, Iowa, is modified by changing its classification to residential. The assessed valuation of \$620,450, representing \$69,750 in land value and \$550,700 in improvement value remains unchanged.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Lyon County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected, accordingly.

Dated this 25 day of July, 2012.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Member


Richard Stradley, Board Chair

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>7-25</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	